Using Technology to Help Struggling Borrowers

The "Bipartisan Budget Act of 2015" included an important provision amending the Telephone Consumer Protection Act (TCPA) so that calls (including both voice calls and text messages) to collect federally-owned or -guaranteed debt can be made to cellular telephones using an auto-dialer or prerecorded voice without prior consent. The purpose of the new law was to allow more borrowers, particularly those in distress, to receive timely information to avoid or get out of delinquency and/or default. The change, if properly applied, will strengthen the student loan servicing and collection system and improve borrower communication. The new law required the Federal Communications Commission (FCC) to issue rules to consider limits to the number and duration of calls to cellular phones. On August 2, 2016, the FCC adopted rules that were overly-broad in their reach and unreasonably restrictive, permitting only three-call-attempts (not actual contacts) over a 30-day period and subjecting callers to strict liability if they inadvertently dial a reassigned number, essentially gutting the intent of the law.

Since passage of the Bipartisan Budget Act, there have been attempts by some detractors to portray the provision as a tool to harass consumers. To the contrary, this important consumer protection will provide a way to help those struggling with student loan debt. According to the U.S. Department of Education, more than 42 million Americans collectively owe nearly $1.3 trillion in federal student loan debt. Of that amount, nearly $165 billion, owed by 10.4 million borrowers, is in default. While a relatively small number of borrowers (less than 1 percent) have student loans over $100,000, the average debt for those receiving a bachelor's degree is approximately $30,000, an amount that has risen at more than twice the rate of inflation over the last decade. With college costs and student loan debt on the rise and high youth unemployment and underemployment, more borrowers are struggling to get a good job and repay their federal student loans on time. In fact, the Department reports that over 11 percent of borrowers who took out a federal student loan defaulted on that loan within three years. Clearly, many Americans are in need of assistance in managing their student loan debt.

According to a recent U.S. Department of Health and Human Services study, nearly 50 percent of all American households are now exclusively wireless, and the average is nearly 70 percent for age groups most likely to have student loans. Current law has not kept pace with the needs of the growing majority of borrowers who are moving away from traditional landline telephones in favor of cell phones.

The following are examples of how the provision included in the Bipartisan Budget Act will assist student and parent borrowers if the FCC were to promulgate reasonable rules for its application:

- Student loan servicers, schools, and their agents would be able to reach out to student and parent borrowers to provide information about the various repayment plans available to assist them under federal law and to provide early contact designed to ensure the understanding of their loan obligations, debt management tools, and other means to avoid default. Nearly 20 million borrowers would receive these important services over the next decade because the restrictions on using available technology to communicate with students and families are removed.

- If these servicers can talk to student and parent borrowers, they almost always can find a solution to avoid default. The challenge is to reach borrowers, and the FCC's restrictive rules create an unnecessary barrier. Industry experience notes that the use of predictive dialing technology increases contact success rates by over 150 percent.

- Over the next decade, nearly 12 million student loan borrowers should avoid the painful consequences of default since loan servicers could contact them using predictive dialing

technology. Without the ability to use modern technology, these borrowers will "time out" and default, simply because of the barriers placed on communicating with them. U.S. Department of Education data confirm that an average of 100,000 borrowers default each month.

- The TCPA's prior express consent exception is not helpful for borrowers who are delinquent or have defaulted on their student loans because it prevented them from receiving information they would want in order to understand and take advantage of the many tools available to provide relief. A reasonable application of the new law will remove nearly 7.9 million borrowers from default status over the next 10 years.

The TCPA was enacted into law in 1991 at a time when mobile phones were rare and consumers were assessed charges for specific calls or time spent using the phone. This is no longer the case as mobile phones are ubiquitous - particularly with the student loan borrower population - and many plans are flat rate or unlimited. In order to continue to protect the federal fiscal interest, it is imperative that the FCC create rules that are consistent with modern technology and current social norms.

NCHER Reform Proposals

The National Council of Higher Education Resources (NCHER) believes that Congress and the Administration must continue to support efforts to remove barriers that prevent student loan servicers and collectors from assisting struggling and defaulted student loan borrowers. We urge Congress to leverage technology to service and recover federal debt by:

- Opposing the HANG UP Act. Congress should be commended for passing the Bipartisan Budget Act to allow for the use of automatic dialing systems when contacting wireless phones in the collection of debt owed to or guaranteed by the United States without the need to obtain the borrower's prior express consent. The "HANG UP Act" would repeal this important provision and harm the very consumers it purportedly wants to protect. Distressed student loan borrowers need timely and accurate information in order to successfully navigate the often-confusing array of student loan repayment options, and help in managing their student loan debt.

- Urging the FCC to reconsider its final TCPA rules. As noted above, the FCC's final rule included restrictive limits on the frequency of calls to borrowers' cell phones. Student loan servicers and collectors do not make telemarketing calls; they have established relationships with borrowers and can assist them in repaying their higher education obligations. Congress should direct the FCC to reconsider its final rule and strike a more appropriate balance between protecting consumers and allowing reasonable and responsible use of dialer technology to reach borrowers on their cell phones to provide them with needed assistance. The final rule allows federal agencies to apply to the FCC for a waiver from the three-call-per-30-day period limit. At a minimum, Congress should urge the Department of Education to request, and the FCC to approve, a waiver of the FCC's limitation for federal student loan calls and, in its place, allow at least 12 call attempts or three live contacts over a 30-day period by federal student loan servicers and collectors. Further, the waiver request and FCC action should rescind the one-call attempt limit for calls to reassigned wireless numbers.

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